

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1422

JOSEPH F. SHANAHAN, Appellant

v.

OSCAR W. RITTENHOUSE, Appellee

ON APPEAL FROM THE NEW JERSEY SUPERIOR  
COURT, APPELLATE DIVISION

MOTION FOR LEAVE TO FILE PETITION  
FOR REHEARING

JOSEPH F. SHANAHAN  
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Appellant respectfully moves for leave  
to file the annexed petition for rehearing  
of the order of the Court dismissing the

appeal in this case, entered 6 June 1977.  
Rehearing is sought at this time because,  
as is pointed out more fully in the annex-  
ed petition, the argument of the appellee  
as set forth in his Motion to Dismiss or  
Affirm is supported by an erroneous para-  
phrasing of the record which is material  
to the decision of the case.

Dated 15 June 1977 Joseph F. Shanahan  
Joseph F. Shanahan  
Attorney for Appellant

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PETITION FOR REHEARING OF ORDER  
DISMISSING THE APPEAL

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Appellant prays that this Court  
grant rehearing of its order of 6 June  
1977 dismissing the appeal in this case

and that the Court note probable jurisdiction in that the matter involves a substantial federal question as stated in the Jurisdictional Statement dated 14 April 1977.

REASONS FOR GRANTING REHEARING

Under sub paragraph (11) of appellee's argument II B that,

"The case does not present a substantial federal question."

(Motion to Dismiss, p.6,7)

he concludes that,

"Appellant's contention that he was 'arbitrarily denied' participation in the hearing before the assignment judge is patently frivolous."

and supports it by the following statement:

"He was not a party to the proceedings, but merely requested that he be permitted to question a witness."

(emphasis added)

The verbatim record of appellant's en-

tire participation in the hearing (copy attached as Exhibit A) negates appellee's above paraphrasing of the record that appellant "merely requested that he be permitted to question a witness." It shows appellant requesting to intervene and the Court immediately denying same. The pertinent part of the transcript is:

"Mr. Shanahan: Your Honor, would it be possible for me to intervene?"

The Court: No. If you want to ask questions consult with Mr. Large."

This is a clear misstatement of the meaning of the record and is analogous to another case where a rehearing was petitioned on the ground that there had been an imperfect record and,

"...that a large part of the matter which was before the court below had been omitted in the transcript certified to this court,..."

Ambler v. Whipple 90 U.S. 278,  
282 (1874)

The court denied the rehearing because it was satisfied, "...from an examination of this additional transcript, that it was wholly immaterial to any issue in the cause."; but in so doing did state at 282 in reference to the claim of imperfect record,

"If this statement be correct, and if the omissions in the transcript on which the case was heard are material to the decision of the case, it presents a strong appeal for reargument;..."

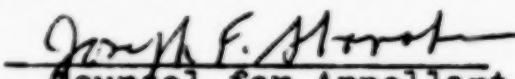
Appellant contends that the above statement misparaphrasing the record in support of appellee's argument that "The case does not present a substantial federal question." which was later adopted by the Court as its reason for dismissal of the appeal, is a material enough defect in the presentation of the facts to be as strong a basis for rehearing as the hypo-

thetical material omissions in the transcript, as stated in the above case, are for reargument. In either case due consideration of the matter by the Court would be flawed by the summary of the facts presented or the incompleteness of the record submitted,

#### CONCLUSION

For the reasons set forth above and in the Jurisdictional Statement, it is respectfully urged that rehearing be granted and that probable jurisdiction for the instant appeal be noted.

Respectfully submitted,

  
Counsel for Appellant

#### CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to



grounds specified in Rule 58 of the rules of this Court.

Joseph F. Shanahan  
Counsel for Appellant

APPENDIX

Copy of Transcript (page 33)

EXHIBIT A

COPY OF TRANSCRIPT (PAGE 33)

Cronin-Cross

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Mr. Shanahan: Your Honor, would it be possible for me to intervene?

The Court: No. If you want to ask questions consult with Mr. Large. He represents the county and I think that is the proper way of handling something like that. You can do it right now before Mr. Cronin leaves. Just a moment, Mr. Cronin, please. State your name.

Mr. Shanahan: My name is Joseph Shanahan. I neglected to say before I am admitted too but I am speaking here as a private taxpayer.

The Court: You are admitted to the Bar of New Jersey?

Mr. Shanahan: Yes, your Honor.

The Court: You are a resident of Hunterdon County?

Mr. Shanahan: Yes.

The Court: All right.

( Mr. Shanahan consults with Mr. Large)

Mr. Large: No more questions, your Honor.

The Court: Thank you.